

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX**

WASHINGTON-GREENE ALTERNATIVE
RESIDENTIAL SERVICES, INC.¹

Employer

and

Case 6-RC-11682

UTILITY WORKERS UNION OF AMERICA,
AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Dalia Belinkoff, a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to the undersigned Acting Regional Director.²

Upon the entire record³ in this case, the Acting Regional Director finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

¹ The Employer's name appears as amended at the hearing.

² Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by June 18, 1999.

³ Both the Employer and the Petitioner filed timely briefs in this matter which have been duly considered by the undersigned.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

As amended at the hearing, the Petitioner seeks to represent a unit of all regular full-time and part-time residential program workers, therapeutic activities aides, residential program trainees and LPNs employed by the Employer at its group homes and day care center located in Southwestern Pennsylvania; excluding house managers, program specialists, qualified mental retardation professional, therapeutic activity director, maintenance employees, and all office clerical employees and guards, professional employees and supervisors as defined in the Act. While the parties are otherwise in accord with respect to the scope and composition of the unit, the Employer, contrary to the Petitioner, would also include therein house managers, program specialists and the qualified mental retardation professional. Contrary to the Employer, the Petitioner contended at the hearing that the house managers are supervisors within the meaning of Section 2(11) of the Act; and that the program specialists and the qualified mental retardation professional are technical employees who do not share a sufficient community of interest to warrant their inclusion in the petitioned-for unit. In its Brief, the Petitioner contended that, should the house managers not be found to be supervisors, they are managerial employees and should be excluded from the unit on that basis. In its Brief, the Petitioner did not reiterate its contention that the program specialists are technical employees; rather it argued for the first time that they are professional employees and supervisors within the meaning of the Act and that they should be excluded from the unit on these bases.⁴ There are approximately 130

⁴ The Petitioner did not address the status of the qualified mental retardation professional in its Brief.

employees in the petitioned-for unit, with an additional 15 employees whose status is in dispute. There is no history of collective bargaining for any of the employees involved herein.

The parties stipulated that the Employer is a Pennsylvania corporation and is a health care institution within the meaning of Section 2(14) of the Act. The Employer provides residential and related services for individuals with disabilities related to mental retardation, primarily in group homes and a day care center, which is also referred to as a therapeutic activity center and as an adult training facility. Involved in this matter are the Employer's 11 group homes and one day care center presently located in Washington County, Pennsylvania. Of these group homes, two are designated "intermediate care facilities", or ICFs, which are funded directly by the State; and the remainder are referred to as "waiver" homes, which are funded by the State via a County department. The Employer maintains an office in Washington, Pennsylvania, which houses its clerical staff. The clerical employees are not in dispute, and are excluded from the petitioned-for unit.

The Employer is jointly owned by Louis DePretis, controller and secretary-treasurer; Martin Ware, president; and Greg Pilarski, vice president. Pilarski also serves as the supervisor of the "waiver" homes. Cynthia Peterson, the Qualified Mental Retardation Professional Supervisor, oversees the operations of the ICFs and the day care facility.⁵ Marilyn Condon is the director of the day care facility. The Employer also employs two nursing supervisors, Beverly DeMasse and Pat Barshick, who oversee the medical care provided to the clients. Finally, the Employer recently created a new position, Human Resources Director, to work with the four supervisors on personnel issues. The position is currently held by Melody DePretis. The parties agreed that each of these individuals has the authority, in the interest of the Employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees or responsibly to direct them in the interest of the Employer. Based

⁵ The staff at the day care facility are called therapeutic activities aides, and their status as part of the petitioned-for unit is not in dispute.

on the parties' stipulation, I find that these individuals are supervisors within the meaning of Section 2(11) of the Act, and they are, accordingly, excluded from the unit found appropriate herein.

Each of the group homes is staffed by a house manager⁶ and several residential program workers.⁷ Each home houses four to five clients who generally leave the home during the day to attend the day care center, or because they are engaged in some type of employment. As the clients are not generally in the home during the day, the homes are not fully staffed at that time. If a client should remain in the home for some reason, such as a situation in which a client was ill, a staff member would remain on site with the client. There is an office in each of the group homes, but it is not assigned to any particular individual; all members of the staff in the home use the office.

The evidence indicates that the house managers may spend up to 70 to 80 percent of their time engaged in the direct care of the clients, the same kind of work performed by the residential program workers. This work is noted on a checklist of tasks to be performed, and the residential program workers decide among themselves who will complete each task, with the exception of items, such as the completion of certain paperwork, the house managers may have specifically assigned. The record does not establish that these latter items are assigned based on the exercise of independent judgment by the house managers. This work includes items such as preparing meals, doing laundry, cleaning various rooms in the house, and filling

⁶ The job description relating to house managers uses the title of residential program supervisor. The record reflects that there are eight or nine house managers, and that in at least one instance, one house manager is responsible for two group homes. The individuals in these positions, as named at the hearing, are: Eva Byers, Jeanette S. Dyson, Patricia A. Karr, Judy K. Kiskadden, Brenda K. Knight, Charlene L. Paluda, Marsha Sweany and Rochelle A. Wilson. The Employer noted that Patricia Weback is currently serving as a temporary house manager. The record does not reflect whether Weback is expected to assume that position on a permanent basis.

⁷ In addition, the Employer employs four or five LPNs who perform nursing functions that the residential program workers are not trained to handle. There is no dispute between the parties that the LPNs are appropriately included in the petitioned-for unit.

out requisite forms which chart the progress of the clients. As tasks are completed, the residential program workers indicate on the list what has been completed by placing their initials at the appropriate place.

The house managers spend their remaining time maintaining clients' records, scheduling employees in the home⁸, submitting time sheets to the office, scheduling and taking clients to medical appointments, and other similar administrative duties. In the absence of the house manager, these administrative functions are performed either by other members of the staff in the home or by a supervisor who is assisting in the home due to the manager's absence.

House managers play no role in the disciplinary process. If a problem comes to the attention of the house manager, the house manager may discuss the issue with the employee in question, but if the matter cannot be resolved, the house manager reports the situation to the supervisor, and the supervisor handles the matter from that point. The house manager makes no recommendation as to discipline to be issued. In addition, any formal documentation of discipline, even written documentation of a verbal warning, must be issued by a supervisor.⁹

House managers also have no role in the hiring of employees or the permanent transfer of employees.¹⁰ House managers are not involved in decisions regarding the promotion of employees, and, although the Employer has not experienced a layoff or recall of employees, the

⁸ The record shows that, at least in some homes, the employees have input into the scheduling. Scheduling is done, however, within guidelines set by Pilarski and Peterson, who ultimately approve the schedules on a weekly basis.

⁹ At the hearing, the Petitioner introduced evidence of a warning issued to employee Sharon Pridgeon in 1995 which was signed solely by the house manager. The record does not reflect the circumstances under which the warning was issued, or whether the house manager was instructed by a supervisor to sign the warning. A subsequent warning issued to Pridgeon was signed by Pilarski, and there was no evidence presented, other than the warning issued in 1995, that house managers have the authority to independently issue any kind of discipline.

¹⁰ With respect to temporary transfers, the record shows that if a house manager finds, due to a call-off or other similar situation, that the house is short-staffed, the house manager may independently contact another house manager to request additional staff that the other house manager may have. If the house manager is unable to sufficiently staff the home in this manner, however, the manager contacts the supervisor, who handles the situation.

record indicates that the house managers would not play any role should such events occur. House managers also may not approve overtime; this must be done by a supervisor. However, house managers may request that employees work approved overtime. In addition, house managers do not have access to employee personnel files.¹¹

Each employee is evaluated on an annual basis. As the house manager works with the residential program workers on a daily basis, the house manager is responsible for filling out a standard evaluation form. This form is completed with the assistance of the residential program worker, who has an opportunity to write comments on the form, and it is then forwarded to the supervisor. Once the supervisor signs off on the form, it is returned, by way of the house manager, to the employee.¹² The contents of the evaluation are not used in awarding bonuses or pay increases; if those occur, they are provided across the board to all employees. The evaluations may be used by admitted supervisors in responding to requests for job transfer or promotions, but there is no indication in the record that the evaluations dictate the outcome of such requests.

Another administrative function performed by the house managers is the checking of time sheets which are filled out by the residential program workers. If the house manager discovers a discrepancy between the schedule and the actual time worked, the manager may initially attempt to resolve the problem directly with the residential program worker. If the problem cannot be resolved at that level, the matter is turned over to a supervisor.

The record reflects that the house managers dress no differently than the residential program workers, and that they are paid one dollar per hour more than the residential program

¹¹ The record reflects that the house manager may request and receive information regarding previous discipline issued to a particular employee, but this information is provided by someone in the Employer's main office; the house managers do not have free access to the entire contents of personnel files. The record does not reflect what use house managers may make of such information.

¹² If there is a problem with the evaluation, a supervisor may sit in with the house manager when the evaluation is returned to the employee.

workers. Peterson and Pilarski have meetings with the house managers on a monthly basis. At these meetings, they discuss matters such as plans for the future, problems in the group homes, and upcoming training. On some occasions, training is conducted at these meetings. In addition, Peterson and Pilarski are responsible for completing evaluations of the house managers.

Each client has a care plan which is designed by the Employer's program specialists.¹³ These specialists assess the needs of each client and determine the appropriate program to be followed for each client. A program specialist is then responsible for monitoring the client's progress.¹⁴ If a client has trouble achieving goals set by the program specialist, then the house manager contacts the appropriate program specialist, who assesses the situation and attempts to resolve the problem. Conversely, if a program specialist feels that the staff is not properly following the designated plan, the program specialist may either discuss this with the house manager, or, if it is a serious problem, report the matter to the supervisor. The program specialists have no authority to issue discipline, and have no evaluation function with respect to any employees.

The program specialists are required by regulations to have a "human service" degree, and the regulations spell out what fields are acceptable to meet this requirement. The program specialists design programs for clients in the "waiver" homes. Two of the program specialists spend most of their time at the day care facility, where they report first to the day care facility's

¹³ Currently, these positions are held by Romaine Carroll, Linda D. Moore, Britt Hinson and Michelle Paniaha. The record reflects that there is an unnamed program assistant who assists the program specialists in their duties. Neither party indicated a position with respect to the inclusion or exclusion of the program assistant. The record does not reflect the duties and responsibilities of the program assistant, but the record does suggest that the function of the program assistant may be so interrelated with the program specialists as to warrant the inclusion of this position, with the program specialists, in the unit found appropriate herein. Accordingly, I will allow the program assistant to vote, subject to challenge of either party, in the election directed herein.

¹⁴ Monitoring is done, in part, by reviewing various forms which the residential program workers are required to complete.

director, Marilyn Condon, and ultimately to Peterson. The other two program specialists report directly to Peterson. The program specialists set their schedules based on work that needs to be done; the schedules are ultimately approved by Peterson.

The Employer also employs one Qualified Mental Retardation Professional (QMRP).¹⁵ The QMRP is responsible for designing the individual habilitation plans for each of the clients residing in the ICF group homes. She coordinates the assessment of each of the clients and coordinates the interdisciplinary team which develops the individual plans. While her responsibilities are similar to those of the program specialists, she coordinates a plan that includes input from professionals such as a speech therapist, physical therapist, psychologist and a recreation therapist. The QMRP is more intimately involved with the medical and therapeutic aspect of a plan than the program specialist. Like the program specialists, the QMRP is also required by regulation to hold a “human service” degree. The QMRP is paid several dollars an hour more than the residential program workers. Like the program specialists, the QMRP sets her schedule with the approval of Peterson.

The record reveals that the QMRP has no traditional supervisory responsibilities. She is not involved in the disciplinary process, she has no role in the hiring or firing of employees, and she makes no recommendations in these regards. The QMRP reports directly to Peterson. If the QMRP had an issue with an employee, the QMRP could attempt to work that out directly, but if she was unsuccessful, she would turn the matter over to Peterson. Like the program specialists, the QMRP has no evaluation function with respect to any employees.

It is well established that for an individual to be found a supervisor within the meaning of the Act, the individual must be vested with more than a title and the theoretical power to perform one or more of the functions enumerated in Section 2(11) of the Act.¹⁶ Possession of any one

¹⁵ This position is currently held by Mary Ann McQuillen.

¹⁶ Section 2(11) of the Act provides:

The term “supervisor” means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or

of the indicia of supervisory authority specified in Section 2(11) of the Act is sufficient to confer supervisory status upon an individual provided that such authority is exercised with independent judgment on behalf of management. Blue Star Ready-Mix Concrete Corporation, 305 NLRB 429 (1991); Hydro Conduit Corporation, 254 NLRB 433, 437 (1981).

The United States Supreme Court and the Board have noted that the legislative history of Section 2(11) of the Act reveals that Congress intentionally distinguished between “straw bosses, leadmen, set-up men, and other minor supervisory employees, on the one hand, and the supervisor vested with such genuine management prerogatives as a right to hire or fire, discipline, or make effective recommendations with respect to such action.” NLRB v. Bell Aerospace Company, A Division of Textron, Inc., 416 U.S. 267, 280-281 (1974); George C. Foss Company, 270 NLRB 232, 234 (1984). Further, the exercise of this authority in a merely routine, clerical, perfunctory or sporadic manner does not confer supervisory status. Chicago Metallic Corporation, 273 NLRB 1677, 1689 (1985). In addition, employees who are mere conduits for relaying information between management and other employees are not statutory supervisors. Bowne of Houston, Inc., 280 NLRB 1222, 1224 (1986).

The burden of proving supervisory status rests on the party alleging that such status exists. Soil Engineering & Exploration Co., Inc., 269 NLRB 55 (1984); Tucson Gas & Electric Company, 241 NLRB 181 (1979). In this case, therefore, that burden rests with the Petitioner. For the reasons which follow, I find that the Petitioner has not met its burden with respect to the house managers and program specialists¹⁷ at issue herein.

discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

¹⁷ As noted above, the Petitioner raised its contention with respect to the alleged supervisory status of the program specialists for the first time in its Brief. Although this issue was not raised specifically at the hearing, since it has been raised at this juncture, I will address this contention herein. I note that at no time has the Petitioner made a similar contention regarding the QMRP.

The record does not reflect that the house managers exercise independent judgment with respect to any of the traditional indicia of supervisory status. Thus, there is no evidence that any house manager has ever effectively recommended that any other employee be hired, discharged, suspended, promoted, rewarded or transferred. While the Petitioner points to a disciplinary warning which was issued in 1995 with only the house manager's signature and no indication of supervisory approval, there was no evidence presented as to the context in which that warning was issued. In addition, a warning which was issued in 1997, less remote in time, does contain Pilarski's signature indicating his approval. There is nothing in the record to suggest that the single unexplained instance of a disciplinary warning signed only by a house manager in 1995 is representative of the Employer's practices relative to such warnings. I find, therefore, that the record does not support the Petitioner's contention that the house managers may independently discipline other employees.

While it is true that the house managers complete annual evaluations of the work performance of the residential program workers with whom they work, the record shows not only that these evaluations require the approval of either Peterson or Pilarski, but also that these evaluations are not used to calculate any salary increases or bonuses.

With respect to assignments and direction of the workforce, the record evidence shows that the tasks to be performed in the group homes are assigned in accordance with guidelines prepared either by Pilarski or Peterson, or are set by the plans designed for the clients by the program specialists. In addition, the house managers spend a majority of their time performing the same tasks as the residential program workers, who are undisputedly not supervisors.¹⁸

¹⁸ The Petitioner contends that the testimony of two residential program workers supports its contention that the house managers, in reality, do not spend a majority of their time performing direct care functions. The record shows, however, that these two witnesses worked for extensive periods of time on the midnight shift and were not in a position to regularly observe the activities of the house managers. Both witnesses stated that they often saw the house managers only as their shift ended and the house manager was arriving for the day. Noting that the house managers generally work during daytime hours, I find that the testimony of the two residential program workers does not change my determination that the house managers are not supervisors, due, in part, to the amount of time they spend directly engaged in the care of clients.

The record evidence also shows that while the house managers may initially attempt to resolve staff issues on their own, if this cannot be done, either Peterson or Pilarski becomes involved, and the house manager's role is simply to report what has occurred. It is well established the merely issuing verbal reprimands and the mere reporting of such matters, which alone do not affect job status or tenure, do not establish supervisory authority. Passavant Health Center, 284 NLRB 887, 889 (1987).

As to the program specialists, there is no evidence in the record that they possess any of the indicia of supervisory status. They are responsible for designing appropriate care plans for the clients, and conveying those care plans to the staff working in the homes so that the plans can be properly implemented. The program specialists have no disciplinary authority; the record shows that if they find a problem with the way a staff member is implementing the care plan, this is reported to Pilarski or Peterson, who then handle the issue, without any recommendation or input from the program specialist. The program specialists serve merely a reporting function under such circumstances, which is not sufficient to qualify them as supervisors within the meaning of the Act.

Based on the above and the record as a whole, I find that the house managers and the program specialists do not possess any indicia of supervisory status exercised in a regular and nonsporadic manner, and with sufficient discretion and independent judgment so as to warrant a finding that they are supervisors within the meaning of the Act.¹⁹ See Hexacomb Corporation, 313 NLRB 983 (1994); Quadrex Environmental Company, Inc., 308 NLRB 101 (1992).

¹⁹ In support of its contention that the house managers are supervisors within the meaning of the Act, the Petitioner noted that the position is referred to as a "supervisor" in the Employer's personnel policies and in the appropriate job description. As stated more fully above, the record does not support the Petitioner's contention, and the mere fact that the house managers may be referred to as "supervisors" in certain of the Employer's documentation does not confer upon them supervisory status within the meaning of Section 2(11) of the Act. In this regard, it is well settled that an individual's status as a supervisor under the Act is determined by the individual's duties, and not merely by his title or job description. An employee cannot be transformed into a supervisor merely by the vesting of a title and the theoretical power to perform one or more of the functions specified in Section 2(11) of the Act. Chicago Metallic Corporation, 273 NLRB 1677, 1688-1689 (1985). In view of my findings herein as to the actual duties and

The Petitioner, contrary to the Employer, would also exclude the house managers on the basis that they are managerial employees.²⁰ It is well established that under Board policy managerial employees are excluded from coverage under the Act. NLRB v. Bell Aerospace Company, 416 U.S. 267 (1974), and cases cited therein. It is equally well settled under the principles set forth by the United States Supreme Court in NLRB v. Yeshiva University, 444 U.S. 672 (1980), that in order for an employee to be considered “managerial”, the employee must (1) formulate and effectuate employer policies or must possess discretion independent of those policies in the performance of his or her duties and (2) must be so closely aligned with management as to be in a position of potential conflict between the employer and fellow employees. See also, Reading Eagle Company, 306 NLRB 871 (1992); General Dynamics Corporation, Convair Aerospace Division, 213 NLRB 851 (1974). The Board has additionally stated that employees do not acquire managerial status by making some decisions or exercising some judgment “within established limits set by higher management.” Holly Sugar Corporation, 193 NLRB 1024 (1971).

In the instant case, it is not clear from the record why the Petitioner contends that the house managers constitute managerial employees. There is no evidence that the house managers play any role in the formulation or effectuation of Employer policies such as would warrant a finding that they are managerial employees excluded from coverage under the Act. I find, therefore, that the house managers are not managerial employees, and that they should not be excluded from the unit on that basis.

At the hearing, the Petitioner contended that the program specialists and the QMRP should be excluded from the petitioned-for unit because they are technical employees. Technical employees are defined as employees whose work is of a technical nature involving

responsibilities of the house managers, the job description for this position is not dispositive of their supervisory status.

²⁰ The Petitioner raised this issue at the hearing, although it is not addressed in its Brief.

the use of independent judgment and requiring the exercise of specialized training of the type usually acquired through advanced education and training in colleges or technical schools. The Folger Coffee Company, 250 NLRB 1 (1980). In The Sheffield Corporation, 134 NLRB 1101, 1103-1104 (1961), the Board held that technical employees should not automatically be excluded from units of other employees, but, rather, the unit placement of such employees should be based upon all the factors relevant to a community of interest finding. That test is an objective standard based upon actual duties and conditions of the job. See e.g., Virginia Mfg. Co., 311 NLRB 992 (1993).

In the instant case, contrary to the assertion of the Petitioner, the record establishes that the program specialists and the QMRP share a sufficient community of interest with the employees in the petitioned-for unit to be included therein, regardless of whether they satisfy the Board's definition of technical employees in the strict sense.²¹ The evidence shows that both the program specialists and the QMRP are part of an interdisciplinary team, which includes the house managers and residential program workers, that generates a care plan for the various clients who reside in the Employer's group homes and participate in the Employer's day care center. In this capacity, the program specialists and the QMRP work with all other employees, particularly the house managers and the residential program workers, to ensure that the prescribed program is followed and that it is effective. There must be contact and interaction among these employees in order to fulfill their respective job responsibilities.

Similarly, the house managers share a community of interest with other employees included in the unit which I find to appropriate herein. The house managers work alongside the residential program workers, spending most of their time doing the same type of work. In addition, the house managers serve as a liaison between the residential program workers and

²¹ I note that technical employees were specifically excluded from the petitioned-for unit in the petition as originally filed, but that the Petitioner did not maintain that position when it amended the petitioned-for unit at the hearing. Moreover, the initial petition sought the inclusion of "nurses", and the petition, as amended, sought the inclusion of LPNs. See Hillhaven Convalescent Center, 318 NLRB 1017, 1018-1019 (1995).

both the program specialists and the QMRP to communicate information regarding the effectiveness of care plans designed for the individual clients.

Accordingly, based upon the above and the record as a whole, I find that the interests of the program specialists, the QMRP and the house managers are so closely allied to those of the other employees in the petitioned-for unit that they should be, and I shall, therefore, include them in the unit found to be appropriate herein.

As noted above, the Petitioner contends in its Brief, for the first time, that the program specialists should be excluded from the bargaining unit because they are professional employees. There is no evidence in the record to support this bald assertion in the Petitioner's Brief.

Section 2(12) of the Act requires that for an employee to be found to be a professional, his work must be, inter alia, "predominantly intellectual and varied in character" and require "the consistent exercise of discretion and judgment in its performance." Furthermore, professional employees must have knowledge of an advanced type "customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning." See e.g. Utah Power & Light Company, 258 NLRB 1059 (1981). It is the character of the work performed rather than the qualifications of the individual at issue that is determinative of the status. Aeronca, Inc., 221 NLRB 326, 327 (1975).

While it is true that the program specialists are required to possess an advanced degree, the degree need only be in a "human services" area, and there is no evidence that the program specialists undergo any specialized training in order to perform the functions required by their positions.

Accordingly, based on the above and the record as a whole, I find that the program specialists are not professional employees within the meaning of the Act and should not be excluded from the unit on that basis.

Accordingly, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time client care staff, including residential program workers, therapeutic activities aides, residential program trainees, LPNs, house managers, program specialists and the qualified mental retardation professional employed by the Employer at its group homes and day care center located in Southwestern Pennsylvania; excluding the therapeutic activity director, maintenance employees, and all office clerical employees and guards, professional employees and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot will be conducted by the Regional Director among the employees in the unit set forth above²² at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.²³ Eligible to vote are those employees in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period and employees engaged in a strike who have been discharged for cause since the

²² Although the unit found appropriate herein is broader than that sought by the Petitioner, I shall not dismiss the petition. If, however, the Petitioner does not desire to participate in an election in the unit herein found appropriate, I shall permit it to withdraw its petition without prejudice upon written notification to the undersigned of its intention to do so within ten days from the date of this Decision.

²³ Pursuant to Section 103.20 of the Board's Rules and Regulations, official Notices of Election shall be posted by the Employer in conspicuous places at least three (3) full working days prior to 12:01 a.m. of the day of the election. As soon as the election arrangements are finalized, the Employer will be informed when the Notices must be posted in order to comply with the posting requirement. Failure to post the Election Notices as required shall be grounds for setting aside the election whenever proper and timely objections are filed.

commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.²⁴ Those eligible shall vote

²⁴ In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc. 156 NLRB 1236 1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that the election eligibility list, containing the full names and addresses of all eligible voters, must be filed by the Employer with the Regional Director within seven (7) days of the date of this Decision and Direction of Election. The Regional Director shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, Room 1501, 1000 Liberty Avenue, Pittsburgh, PA 15222, on or before June 11, 1999. No extension of time to file this list may be granted, except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

whether or not they desire to be represented for collective bargaining by Utility Workers Union of America, AFL-CIO.

Dated at Pittsburgh, Pennsylvania, this 4th day of June 1999.

Stanley R. Zawatski
Acting Regional Director, Region Six

NATIONAL LABOR RELATIONS BOARD
Room 1501, 1000 Liberty Avenue
Pittsburgh, PA 15222

420-2963
460-7550-8700
470-3360